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BEFORE THE STATE AUDITOR;  
EX-OFFICIO COMMISSIONER OF SECURITIES AND INSURANCE  
HELENA, MONTANA

IN THE MATTER OF:	) Case No.: I 08-18-06-236
	)
PATRICK PHILLIP DAVISON, individually and in	) NOTICE OF PROPOSED AGENCY
his capacity as agent/owner of DAVISON, LLC, and	) DISCIPLINARY ACTION and
P & N VENTURES d/b/a PPV, all of Billings,	) OPPORTUNITY FOR HEARING
Montana.	)
	)
Respondent.	)

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Staff of the Securities Department (Department) of the office of the State Auditor as Commissioner of Securities of the state of Montana (Commissioner), pursuant to the authority of the Securities Act of Montana, §§30-10-101, *et seq.*, MCA (2005), is proposing to the Commissioner that he take specific action against PATRICK PHILLIP DAVISON, individually and in his capacity as agent/owner of Davison, LLC and P & N Ventures d/b/a PPV named above for violations of the Montana Securities Act. The Commissioner has authority to take such action under the provisions of §§ 30-10-102, 30-10-107, 30-10-201, 30-10-202, 30-10-301, 30-10-304, 30-10-305, and 30-10-309, (2005) MCA.

In particular, the Department's staff is recommending specific action against Patrick Phillip Davison including imposition of appropriate fines and appropriate restitution, with interest, pursuant to the provisions of the Montana Securities Act.

Service of process is pursuant to Section 30-10-107 (8), (2005) MCA.

### **REASONS FOR ACTION**

There is probable cause to believe that the following facts, if true, justify and support such specific action.

### **ALLEGATIONS**

1. The time period relevant to this action is September 1, 2001 through August 31, 2006.
2. Patrick Phillip Davison (Davison) was registered as a securities salesperson and an investment advisor representative in the State of Montana from at least September 1, 2001 through March 7, 2003. During this period Davison worked for UBS/PaineWebber in its Billings, Montana branch office. In or near March 7, 2003, Davison resigned from UBS/PaineWebber, terminating his registration as a securities salesperson and an investment advisor representative in Montana. Davison has not subsequently sought registration in any capacity in the securities industry in Montana.
3. In or near July 2000 Davison was the subject of a customer complaint while employed by UBS/PaineWebber. In or near early 2004, Davison was the subject of at least 4 additional customer complaints after he had terminated his employment with UBS/PaineWebber. These complaints are the same or similar in nature to the complaints illustrated in this pleading. The brokerage firm took steps to resolve each of the complaints against Davison. However, the

Department did not receive any customer complaints against Davison during this specific period, nor did UBS/PaineWebber specifically notify the Department about these complaints.

4. The Department was contacted by one of Davison's customers (Complainant 1) on or around August 21, 2006. Complainant 1 provided copies of documents he received from Davison during the course of Complainant 1's contact and as part of business transactions engaged in with Davison.

5. According to the information provided by Complainant 1, in or near October 2003 Davison approached Complainant 1 seeking money from Complainant 1 to invest in an Individual Retirement Account (IRA) directly with Davison. Because Complainant 1 was Davison's customer while he was registered as a securities salesperson, Davison had specific knowledge regarding Complainant 1's financial affairs. Davison instructed Complainant 1 to withdraw \$500,000 from the IRA Complainant 1 maintained at UBS/PaineWebber. Subsequently, on or about October 23, 2003, Complainant 1 withdrew this amount from that UBS/PaineWebber IRA. Davison then instructed Complainant 1 to write two checks payable to First Citizen's Bank in Billings to initiate the IRA Davison proposed to manage for Complainant 1. Complainant 1 provided the two checks to Davison. Davison deposited one check in an account at First Citizen's Bank, and Davison deposited the other check into a different account at First Citizen's Bank.

6. Davison initially prepared a statement for Complainant 1 that indicated the new IRA was invested in "Contract 2003-1" held within a "Qualified Plan Davison LLC" with a term of 18% interest for sixty-seven (67) days. Later, in statements prepared for Complainant 1 by Davison, Davison indicated the funds were moved into "Contract 2003-2" with a term of 8% interest for a two (2) year term. On a statement prepared by Davison dated December 31, 2004,

Davison indicated "Contract 2003-2" held in "Qualified Plan Davison LLC" had a value of \$535,627. Additionally, Complainant 1 alleges Davison withdrew another \$164,000 from Complainant 1's UBS/PaineWebber IRA account and invested the proceeds in "Contract 2005-1" which was also held in "Qualified Plan Davison LLC". Davison disclosed this "Contract 2005-1" with a term of 8% interest in the amount of \$164,000 in a statement he prepared for Complainant 1 dated December 31, 2004.

7. Complainant 1 instructed Davison to issue a monthly distribution check in the amount of \$5,560.00 with funds derived from the IRA Davison allegedly created for Complainant 1 at First Citizen's Bank. Complainant 1 indicated receipt of monthly distribution checks until on or around February 27, 2006, when Davison wrote a check for the monthly IRA distribution check in the amount of \$5,560.00 payable to Complainant 1's spouse, from Davison LLC's account at First Citizen's Bank. The check was returned to Complainant 1 by First Citizen's Bank stamped "NSF".

8. Subsequent to Complainant 1 receiving the NSF check, Complainant 1 visited First Citizen's Bank in Billings. Complainant alleges that the First Citizen's Bank provided information indicating there are no accounts in Complainant 1's name at First Citizen's Bank in Billings, the accounts in which Complainant 1's checks were deposited were never accounts in Complainant 1's name and also determined that Complainant 1 has never had an IRA at First Citizen's Bank.

9. Davison issued a 1099-INT to Complainant 1 for tax year 2003 indicating \$14,794.00 in interest income had been paid to Complainant 1 by Davison, LLC, an entity owned and controlled by Davison. The Department has determined that the federal tax identification number used on the 1099-INT is not valid.

10. Since February 2006, Complainant 1 has received nothing more than statements from Davison regarding this IRA account.

11. Complainant 1 further alleged that in December 2005 Davison proposed another investment opportunity. Complainant 1 gave Davison \$250,000, which was withdrawn from Complainant 1's UBS/PaineWebber account with a stipulation to Davison that the principal be returned to Complainant 1 by March 2006 in order that Complainant 1 could pay state and federal income taxes. Davison agreed the principal would be returned by March 2006. Davison failed to return the principal to Complainant 1 by the end of March. When Complainant 1 contacted Davison in early April 2006 about the investment, Davison told him that the money had been erroneously rolled-over. Davison returned \$100,000 of the principal and \$15,000 in interest to Complainant 1 but has failed to return the balance of the principal and interest to date.

12. Neither the Davison LLC, "Qualified Plan Davison LLC", "Contract 2003-1", "Contract 2003-2", nor "Contract 2005-1" have registered their securities with the Montana Securities Division nor have they sought an exemption from registration.

13. The Department was contacted by another of Davison's customers (Complainant 2) on or around August 21, 2006. Complainant 2 provided copies of documents he received from Davison during the course of Complainant 2's contact and as part of business transactions engaged in with Davison.

14. According to Complainant 2, in or about July 2002 Davison approached Complainant 2 and Complainant 2's spouse about investing in an investment entitled "The St. Labre Indian School Trust", P.O. Box 20353, Billings, MT 59601. Davison told these Complainants they were purchasing a bond that would pay them a 7% tax-free rate of return and

would come due on April 30, 2012. Davison told the Complainants the note was secured by oil and gas royalties and that their non-taxable interest would be reinvested.

15. Pursuant to Davison's instructions Complainant 2 and spouse withdrew \$275,000 from their UBS/PaineWebber account on three separate occasions in July 2002. They wrote one check in the amount of \$125,000 on July 3, 2002; they wrote another check in the amount of \$75,000 on July 9, 2002; and they wrote a third check in the amount of \$75,000 on July 22, 2002. These checks were all made payable to "PPV" an entity owned and controlled by Davison. These Complainants delivered the checks to Davison at his office at UBS/Paine Webber's Billings branch office in July 2002. These three checks were subsequently deposited by Davison in an account at First State Bank of Fort Benton, Montana.

16. Davison provided statements to Complainant 2 and spouse showing them the value of their investment in the St. Labre Indian School Trust (School Trust). In approximately February 2003, Davison provided these Complainants a statement that indicated their investment in the School Trust had earned interest totaling \$6,487 over a period of 123 days. On or about November 10, 2003 Davison provided these Complainants a statement that indicated their School Trust investment was valued at \$284,626. On or about December 31, 2004 Davison provided these Complainants a statement that indicated their School Trust investment was valued at \$307,179.

17. To date, Complainant 2 and spouse have received nothing more than statements from Davison on their investment in the St. Labre Indian School Trust. As a result, these Complainants spoke with managers at UBS/PaineWebber who indicated the investment was not something offered or sold by UBS/PaineWebber. Additionally, the investment was never carried or displayed on their UBS/PaineWebber monthly account statements. Complainant 2 spoke with



the attorneys for the St. Labre Indian School and personally visited with the school's Chief Executive Officer, Curtis Yarlott and the school's accountant, Jim McDonald. All of these St. Labre Indian School officials allegedly indicated the note was not issued by the school, the school does not have an Indian School Trust, there are no oil and gas royalties securing any indebtedness of the school and a St. Labre Indian School Trust does not exist.

18. The entity "PPV" is not now nor has it ever been registered with the Montana Secretary of State's Office. The Department has determined that the federal tax ID number used by Davison for PPV is not a valid federal tax ID number.

19. Neither the entity "PPV" nor the St. Labre Indian School Trust have registered their securities with the Montana Securities Division nor have they sought an exemption from registration.

20. On or about May 17, 2006, Davison again approached Complainant 2 and spouse about investing in a promissory note in the amount of \$100,000 with Davison, LLC, an entity owned and controlled by Davison. The note indicates an interest rate of 10%, payable quarterly, with a maturity date of May 17, 2007. The note includes a legend stating "secured with a Security Interest in 1,500 shares of ExxonMobil Corporation common stock and guaranteed by Patrick P. Davison." These Complainants subsequently invested in the promissory note. The first payment to Complainants derived from the promissory note was due on June 30, 2006. To date, they have not received any payment from the note. Additionally, Davison has not demonstrated to these Complainants that he owns 1,500 unencumbered shares of ExxonMobil Corporation.

### **CONCLUSIONS OF LAW**

1. The Montana State Auditor is the Commissioner of Securities (Commissioner) pursuant to §§ 30-10-107, 2-15-1901, MCA.

2. The Commissioner has jurisdiction over this matter pursuant to §§ 30-10-102, 30-10-107, 30-10-201, 30-10-202, 30-10-301, 30-10-304, 30-10-305, and 30-10-307, MCA.

3. The administration of the Securities Act of Montana, § 30-10-101, *et seq.*, MCA, and is under the supervision and control of the Securities Commissioner, pursuant to § 30-10-107, MCA.

4. The Commissioner shall administer the Securities Department to protect investors, pursuant to § 30-10-102, MCA.

5. Davison was a Montana registered salesperson as defined at § 30-10-103(20), MCA, and was so registered pursuant to § 30-10-201, MCA, during the relevant time period until March 7, 2003. Subsequent to Davison losing his registration as a salesperson in Montana, he conducted securities business without proper registration in violation of § 30-10-201, MCA.

6. The investment contract and investment opportunity offered and sold by Davison to Complainant 1 are both securities as defined at § 30-10-103 (22) (a), MCA. Neither of these securities were registered with the Department in violation of § 30-10-202, MCA.

7. The St. Labre Indian School Trust bond and the promissory note offered and sold by Davison to Complainant 2 and spouse are both securities as defined at § 30-10-103 (22) (a), MCA. Neither of these securities were registered with the Department in violation of § 30-10-202, MCA.

8. Davison made untrue statements and omitted material facts when he told Complainant 1 that Davison would invest Complainant 1's \$664,000 in a qualified IRA plan that does not exist, in violation of § 30-10-301 (1) (b), MCA.



9. Davison also made untrue statements and omitted material facts when he told Complainant 1 that Davison would invest Complainant 1's \$250,000 in an investment opportunity and return the principal and interest by March 2006 and then failed to do so, in violation of § 301-10-301 (1) (b), MCA.

10. Davison made untrue statements and omitted material facts when he told Complainant 2 and spouse he would invest their \$275,000 in St. Labre Indian School Trust when the St. Labre Indian School Trust does not exist, in violation of § 30-10-301 (1) (b), MCA.

11. Davison also made untrue statements and omitted material facts when he told Complainant 2 and spouse he would pay them interest quarterly on his promissory note beginning June 30, 2006, and then failed to do so, in violation of § 30-10-301 (1) (b).

12. Davison engaged in an act, practice and course of business that operated as a fraud or deceit when he instructed Complainant 1 to write checks representing proceeds from the distribution from Complainant 1's qualified IRA account to an account owned and controlled by Davison at First Citizen's Bank in Billings and then failed to invest his money in a qualified IRA for Complainant 1, in violation of § 30-10-301 (1) (c), MCA.

13. Davison also engaged in an act, practice and course of business that operated as a fraud or deceit when he took \$250,000 from Complainant 1 for an investment opportunity and failed to return the principal and interest by March 2006 as promised, in violation of § 301-10-301 (1) (c), MCA.

14. Davison engaged in an act, practice and course of business that operated as a fraud or deceit when he instructed Complainant 2 and spouse to write checks to an account owned and controlled by Davison in the name of PPV at the First State Bank of Fort Benton and

then failed to invest their money in any viable investment, in violation of § 30-10-301 (1) (c), MCA.

15. Davison also engaged in an act, practice and course of business that operated as a fraud or deceit when he personally borrowed money from Complainant 2 and spouse and subsequently failed to make the requisite first quarterly payment on June 30, 2006, in violation of § 30-10-301 (1) (c), MCA.

16. Davison also engaged in an act, practice and course of business that operated as a fraud or deceit when he failed to demonstrate to Complainant 2 and spouse Davison's personal unencumbered ownership of 1,500 shares of ExxonMobil Corporation, in violation of § 30-10-301 (1) (c), MCA.

17. Davison engaged in dishonest and unethical practices in the securities business when Davison misappropriated the money entrusted to him by all of the Complainants and by engaging in other conduct such as forgery, theft, non-disclosure, incomplete disclosure, misstatement of material facts, manipulative and deceptive practices in violation of §30-10-201(13)(g), MCA, and ARM § 6.10.126.

#### **RELIEF SOUGHT**

1. Order Davison to pay restitution to the victims in this case, including 10% interest from the date of the wrong-doing, pursuant to § 30-10-309, MCA;

2. Order Davison to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-301 (1) (b), MCA, pursuant to § 30-10-305 (3), MCA;

3. Order Davison to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-301(1)(c), MCA, pursuant to § 30-10-305(3), MCA;

4. Order Davison to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-201 (13) (g), MCA, and ARM § 6.10.126, pursuant to §§ 30-10-201 (18) and 30-10-305(3), MCA;

5. Order Davison to pay a fine not to exceed \$5,000 for violating § 30-10-201, MCA, pursuant to § 30-10-201 (18), MCA;

6. Order Davison to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-202, MCA, pursuant to § 30-10-305 (3), MCA; and

6. Any other such relief allowed by law or required by justice.

### **PUBLIC INTEREST**

For any and all of the reasons set forth above, it is in the public interest and will protect Montana investors to:

1. Issue a cease and desist order barring Davison from further violations of the Act;

2. Order Davison to pay administrative fines in an amount and upon such terms and conditions as supported by the evidence and determined at hearing of this matter;

6. Order Davison to pay restitution to Complainants in an amount and upon such terms and conditions, including the statutory 10% per annum interest on the losses Complainants incurred, as supported by the evidence and determined at hearing of this matter; and

7. Take such other actions which may be in the public interest and necessary and appropriate for the protection of Montana investors.

### **STATEMENT OF RIGHTS**

You are entitled to a hearing to respond to this notice, present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner

appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, sections 2-4-601, MCA, and following, including Section 2-4-631, MCA. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing.

If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within fifteen (15) days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to Roberta Cross Guns, Special Assistant Attorney General, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to Section 2-4-603(2), MCA, you may not request to proceed informally if the action could result in suspension, revocation or any other adverse action against a professional license. Should you request a hearing on the matters raised in this Notice, a hearing must be held within 45 days of the request, unless postponed by mutual consent of the parties, pursuant to § 33-1-701 (2), MCA.

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of Application of American Smelting and Refining Co., (1973), 164 Mont. 139, 520 P.2d 103.

#### **CONTACT WITH SECURITIES COMMISSIONER'S OFFICE**

If you have questions or wish to discuss this matter, please contact Roberta Cross Guns, legal counsel for the State Auditor, at 840 Helena Avenue, Helena, MT, 59601, (406)-444-2040 or, within Montana, (800)-332-6148. If an attorney represents you, please make any contacts with this office through your attorney.

### POSSIBILITY OF DEFAULT

Failure by Respondent to give notice or to advise of Respondent's demand for a hearing or informal procedure within fifteen (15) days, will result in the entry of a default order imposing the disciplinary sanctions against Respondent, without further notice to Respondent, pursuant to 6.2.101, Administrative Rules of Montana and the Attorney General's Model Rule 10, 1.3.214.

DATED this 25<sup>th</sup> day of August, 2006.

JOHN MORRISON  
State Auditor and ex-officio  
Commissioner of Securities

By: Roberta Cross Guns  
Roberta Cross Guns  
Special Assistant Attorney General